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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/939,161	08/24/2001	Richard W. Voellmy	4118	
7590 06/01/2006		EXAMINER OH, SIMON J		
Richard W. Voellmy				
hsf pharmaceutical s.a. avenue des cerisiers 39b pully, 1009			ART UNIT	PAPER NUMBER
			1618	
SWITZERLAN	ND		DATE MAILED: 06/01/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)				
Office Action Summary		09/939,161	VOELLMY, RICHARD W.				
		Examiner	Art Unit				
		Simon J. Oh	1618				
	The MAILING DATE of this communication appears on the cover sheet with the correspondence address						
Period for Reply							
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).							
Status							
1)⊠	Responsive to communication(s) filed on 09 M	<u>arch 2006</u> .					
2a)⊠	This action is <b>FINAL</b> . 2b) This action is non-final.						
3)	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims							
4)⊠ Claim(s) <u>26-33</u> is/are pending in the application.							
-	4a) Of the above claim(s) is/are withdrawn from consideration.						
5)□	5) Claim(s) is/are allowed.						
	Claim(s) <u>26-33</u> is/are rejected.						
· <u> </u>	Claim(s) is/are objected to.						
8)[_]	Claim(s) are subject to restriction and/or	r election requirement.					
Application Papers							
9)[	The specification is objected to by the Examine	r.					
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.							
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.							
Priority u	ınder 35 U.S.C. § 119						
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).							
a) ☐ All b) ☐ Some * c) ☐ None of:							
	1. Certified copies of the priority documents have been received.						
2. Certified copies of the priority documents have been received in Application No							
3. Copies of the certified copies of the priority documents have been received in this National Stage							
application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.							
	the attached detailed office action for a list	or the definied depics not receive	u.				
Attachmen							
1)  Notice of References Cited (PTO-892)  4) Interview Summary (PTO-413)  Paper No(s)/Mail Date							
3) Inform	nation Disclosure Statement(s) (PTO-1449 or PTO/SB/08) r No(s)/Mail Date		atent Application (PTO-152)				

### **DETAILED ACTION**

# Papers Received

Receipt is acknowledged of the applicant's amendment, response, and petition for extension of time, all received on 09 March 2006.

# Claim Rejections - 35 USC § 101 and 112

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claims 26-33 under 35 U.S.C. 101 is maintained.

The rejection of Claims 26-33 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement is maintained

# Response to Arguments

Applicant's arguments filed 09 March 2006 have been fully considered but they are not considered persuasive.

The examiner interprets the use of the transitional phrase "consisting of" to mean that the instantly claimed invention has only a single step, which is the heat treatment to a patient. The claims do not specifically contain any further method steps related to the actual administration of a chemotherapeutic agent. Recitations in the instant claims regarding chemotherapy are phrased only in terms of a future intended use. As such, the examiner does not give such phrases patentable weight. The instantly claimed treatment, as defined by the applicant, would only then

be considered useful when there is also the additional step of the administration of a chemotherapeutic agent, which should be included in the instant claims. The currently defined invention having the single step of a heat treatment to the scalp of skin of a subject cannot therefore be found patentable according to the rejections under 35 U.S.C. § 101 and § 112, as previously set forth. The claims will remain rejected.

#### Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

# Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon J. Oh whose telephone number is (571) 272-0599. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Simon J. Oh Examiner Art Unit 1618

sjo

MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER